

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 4:05-CR-00202 GTE

KENDALL DONNELL BAKER

ORDER

Before the Court are two motions filed by the Defendant, proceeding *pro se*. Defendant has filed a Motion to Appoint Counsel and a Motion to Modify and Reduce a Term of Imprisonment pursuant to 18 U.S.C. § 3582. Defendant, who was sentenced for felon in possession of a firearm,¹ asserts that his sentence should be reduced based on recent changes in the U.S. Sentencing Guidelines.

On November 1, 2007, the United States Sentencing Commission adopted Amendment 709, which amended § 4A1.2 -- the guideline addressing how misdemeanor and petty offenses are calculated when determining a defendant's criminal history score. Based on this amendment, Defendant asserts that his sentence should be modified under 18 U.S.C. § 3582(c)(2).

Since Defendant was sentenced before November 1, 2007, Amendment 709 must be retroactive to apply in this case. Guideline § 1B1.10, titled "Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)," lists all Guideline Amendments that may be applied retroactively.² Since Amendment 709 is not listed in § 1B1.10(c), it is not

¹Doc. Nos. 26 and 27.

²U.S. SENTENCING GUIDELINES MANUAL § 1B1.10(c) (Supp. 2007) reads: "Amendments covered by this policy statement are listed in Appendix C as follows: 126, 130, 156, 176, 269, 329, 341, 371, 379, 380, 433, 454, 461, 484, 488, 490, 499, 505, 506, 516, 591, 599, 606, 657, 702, and 706 as amended by 711." See also, *U.S. v. Cofield*, No. 07-4502, 2007 WL 4532938 (4th Cir. Dec. 26, 2007) (holding that Amendment 709 is not retroactive); *U.S. v. Godin*, 2008

retroactive and, therefore, is not applicable in this case.

CONCLUSION

Because the guideline amendments upon which Defendant relies may not be applied retroactively, there is no legal basis for computing the guideline sentence applicable to the offense of conviction differently than it was computed at sentencing. Accordingly,

IT IS HEREBY ORDERED THAT Defendant's Motion to Appoint Counsel (# 32) and Motion to Reduce a Term of Imprisonment (# 33) be, and they are hereby, DENIED.

IT IS SO ORDERED THIS 28th day of April, 2008.

/s/Garnett Thomas Eisele
UNITED STATES DISTRICT JUDGE

WL 1006669 (1st Cir. April 10, 2008) (holding that Amendment 709 is not retroactive).